

CHRISTOPHER D. SULLIVAN (148083)  
csullivan@diamondmccarthy.com  
MATTHEW S. SEPUYA (287947)  
msepuya@diamondmccarthy.com  
**DIAMOND McCARTHY LLP**  
150 California Street, Suite 2200  
San Francisco, California 94111  
Tel: (415) 692-5200

Attorneys for Plaintiff NATIONAL  
MEDICAL SERVICES, INC. dba NMS  
LABS

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

NATIONAL MEDICAL SERVICES,  
INC. dba NMS LABS, a Pennsylvania  
Corporation.

Plaintiff,

vs.

INDX LIFECARE, INC., a Delaware  
Corporation,

Defendants.

Case No.

**VERIFIED COMPLAINT FOR  
MULTIPLE BREACHES OF  
CONTRACT AND MONEY HAD AND  
RECEIVED**

Plaintiff National Medical Services, Inc. dba NMS Labs (“Plaintiff” or “NMS”),  
hereby alleges and complains against Defendant iNDx LifeCare, Inc. as follows:

**PARTIES**

1. Plaintiff NMS is a Pennsylvania Corporation with its principal place of  
business in Pennsylvania. Plaintiff transacts business in California and in the city of Los  
Gatos, Santa Clara County.



1 and its exhibits, and to comply with a number of material reporting provisions as also  
2 outlined in the PDA and its exhibits.

3 8. NMS fully complied with its obligations under the PDA as the project began  
4 and at all other times.

5 9. NMS provided \$1 million in financing to iNDx in October of 2014, pursuant to  
6 a secured promissory note. NMS subsequently provided another \$500,000 in loan  
7 financing to iNDx pursuant to a second secured promissory note and an Addendum to the  
8 Product Development Agreement, entered into as of October 2, 2014 (“PDA  
9 Addendum”), a true and correct copy of which is attached hereto as Exhibit 2.

10 10. iNDx has failed to repay the two secured loans, but NMS is not seeking in this  
11 action remedies based on the failure of iNDx to repay the secured loans.

12 11. In December of 2015 NMS made an unsecured loan of \$150,000 to iNDx,  
13 which iNDx agreed to repay according to the terms outlined in the Promissory Note  
14 attached as Exhibit 3. Exhibit 3 is a true and correct copy of a Promissory Note reflecting  
15 the \$150,000 loan from NMS to iNDx.

16 12. NMS made all of the required payments due under the PDA and PDA  
17 Addendum. These payments totaled \$1,160,000.

18 13. NMS subsequently made additional loans of \$250,000, through a wire transfer  
19 of \$150,000 made on January 22, 2016 and a wire transfer of \$100,000 made on February  
20 25, 2016.

21 14. iNDx failed to honor its obligations to properly document or repay the  
22 additional loans outlined in paragraph 13 above.

23 15. Despite the substantial support of NMS, the financial condition of iNDx  
24 deteriorated dramatically in 2015 and worsened even more in 2016.

25 16. iNDx defaulted on its obligations to NMS under the secured promissory notes  
26 and is in default under the terms of the Promissory Note attached as Exhibit 3, as also  
27 further described below.

28 17. iNDx also materially defaulted on numerous obligations outlined in the PDA

1 and defaulted on the obligations it owed under the PDA Addendum, as also outlined  
2 further below.

3 18. iNDx failed to repay the additional loans (the “Unsecured Loans”) outlined in  
4 Paragraph 12 above and to abide by the obligations it undertook at the time that it  
5 borrowed money through the Unsecured Loans with NMS.

6 19. NMS is now forced to file this action to recover for its substantial losses as a  
7 result of the many material failures of iNDx to honor its promises and comply with its  
8 contractual and other obligations.

9 **FIRST CAUSE OF ACTION**

10 **BREACH OF CONTRACT (PROMISSORY NOTE)**

11 20. On or about December 10, 2015, Plaintiff NMS and Defendant iNDx entered  
12 into a written contract as evidenced by the Promissory Note. A copy of the contract,  
13 marked “Exhibit 3,” is attached to this complaint and incorporated by reference.

14 21. Plaintiff NMS has performed all the conditions, covenants, promises, and  
15 agreements required of it under the terms of the contract.

16 22. Defendant iNDx has failed, and continues to fail, to perform its part of the  
17 contract or to tender such performance. In particular, iNDx has not met its obligation to  
18 pay the principal amount, and all interest owing on the principal amount, despite the  
19 obligation of iNDx to pay the principal amount owed since there have been a number of  
20 additional events of default under the Promissory Note, as specified in paragraph 4 of the  
21 Promissory Note. For example, and not by way of limitation, iNDx is in default of its  
22 obligations under the secured promissory notes outlined above in paragraph 9; iNDx is in  
23 default of its obligations under the PDA; and is in default of its obligations under the PDA  
24 Addendum.

25 23. NMS hereby makes a demand that iNDx pay the entire principal and accrued  
26 interest owed under the Promissory Note.

27 24. Defendant iNDx is obligated to pay the expenses of Plaintiff NMS in enforcing  
28 the Promissory Note, including its attorney’s fees.

1           25. Because of Defendant's failure to perform its obligations under the contract,  
2 Plaintiff has been damaged in the sum of \$150,000, plus the unpaid interest, no part of  
3 which has been paid.

4                                   **SECOND CAUSE OF ACTION**

5                                   **BREACH OF CONTRACT (ADDITIONAL LOANS)**

6           26. As outlined in paragraph 13 above, Plaintiff NMS made additional Unsecured  
7 Loans to Defendant iNDx in the total amount of \$250,000.

8           27. In consideration for the receipt of these loans, Defendant iNDx was to, among  
9 other things, repay the additional Unsecured Loans on the same terms as agreed to in the  
10 Promissory Note.

11           28. Plaintiff NMS has performed all the conditions, covenants, promises, and  
12 agreements required of it under the terms of the contract.

13           29. Defendant iNDx has failed, and continues to fail, to perform its obligations  
14 pursuant to the additional loan contracts regarding the Unsecured Loans or to tender such  
15 performance as is required per the loan agreements. In particular, iNDx has not met its  
16 obligations to repay the principal amounts of the Unsecured Loans, and all interest owing  
17 on the principal amounts, despite the obligation of iNDx to pay the principal amounts  
18 owed since there have been a number of events of default under the terms of the loan  
19 agreements.

20           30. NMS hereby makes a demand that iNDx pay the entire principal and accrued  
21 interest of the Unsecured Loans owed under the additional loan agreements.

22           31. Because of Defendant's failure to perform its obligations under the contract,  
23 Plaintiff has been damaged in the sum of \$250,000, plus the unpaid interest, no part of  
24 which has been paid.

25                                   **THIRD CAUSE OF ACTION**

26                                   **BREACH OF CONTRACT (PDA AND PDA ADDENDUM)**

27           32. On or about August 1, 2014, Plaintiff NMS and Defendant iNDx entered into a  
28 written contract as evidenced by the PDA. A copy of the contract, marked "Exhibit 1," is

1 attached to this complaint and incorporated by reference.

2 33. On or about October 22, 2014, Plaintiff NMS and Defendant iNDx entered into  
3 a written addendum to the PDA contract as evidenced by the PDA Addendum. A copy of  
4 the Addendum, marked "Exhibit 2," is attached to this complaint and incorporated by  
5 reference.

6 34. Plaintiff NMS has performed all the conditions, covenants, promises, and  
7 agreements required of it under the terms of the PDA and the PDA Addendum, including  
8 paying all the amounts called for under the PDA and PDA Addendum.

9 35. Defendant iNDx has breached numerous material obligations that it promised  
10 to perform in the PDA and the PDA Addendum.

11 36. For example, and not by way of limitation, iNDx committed the following  
12 material breaches of the PDA:

13 A. iNDx neglected to properly undertake its agreed-upon development  
14 activities regarding the development of assays required under the PDA.

15 B. iNDx improperly spent time and used NMS funds to secure  
16 investment monies for use other than the development of Products (as  
17 defined specifically in the PDA) for use in the Field (also as defined  
18 specifically in the PDA)..

19 C. iNDx repeatedly spent NMS provided funds on uses not related to  
20 development of Products for use in the Field.

21 D. iNDx failed on many occasions to provide reports regarding uses of  
22 funds and other reports required by the PDA.

23 E. iNDx failed to produce form models as required by the Development  
24 Plan and as outlined in the PDA.

25 F. iNDx failed to deliver fully functional Initial Devices or cartridges as  
26 required by Section 3.4.2(ii) of the PDA.

27 G. iNDx failed to create assay development set up and engage in proper  
28 assay testing.

H. iNDx improperly evaluated the sampling devices and was negligent  
in design evaluation.

I. iNDx failed to create professional designs for the assay cartridge and  
reader.

1 J. iNDx allowed its financial condition to so deteriorate that it could not  
2 meet its business obligations and NMS was required to pay obligations  
3 owed by iNDx in order to prevent further damage to the product  
4 development efforts.

5 37. iNDx breached its obligations under the PDA Addendum by, among other  
6 issues, the failure of iNDx to deliver a functional New Device as outlined in the PDA  
7 Addendum.

8 38. iNDx has been notified of material defaults under the PDA and the PDA  
9 Addendum and has failed to cure its defaults.

10 39. Because of Defendant's failure to perform its obligations under the PDA and  
11 PDA Addendum, Plaintiff NMS has been damaged and suffered substantial losses,  
12 including the losses from all amounts paid under the PDA. In addition, for example only  
13 and not by way of limitation, NMS has been forced to spend management time and effort  
14 trying to mitigate the problems to the joint development efforts caused by the failures of  
15 iNDx and has been forced to spend significant amounts to pay obligations owed by iNDx.  
16 For example only, and not by way of limitation, NMS had to loan \$79,000 to iNDx to pay  
17 wages and taxes owed by iNDx, which iNDx has not repaid, and NMS paid substantial  
18 amounts outstanding to iNDx vendors.

#### 19 **FOURTH CAUSE OF ACTION**

##### 20 **COMMON COUNT – MONEY HAD AND RECEIVED**

21 40. As outlined in paragraph 13 above, Plaintiff NMS made two loans totaling  
22 \$250,000 through two wire transfers to Defendant iNDx in 2016.

23 41. iNDx received the money from NMS that was intended as a loan and iNDx  
24 indicated was intended to be repaid to NMS.

25 42. As outlined above, Defendant iNDx has not repaid any of the money loaned to  
26 Plaintiff NMS and not paid any interest for the use of the money.

27 43. Plaintiff NMS has been damaged in the amount of \$250,000, plus the amount  
28 of unpaid interest.

**PRAYER FOR JUDGMENT**

WHEREFORE, Plaintiff prays for judgment against iNDx as follows:

1. On the First Cause of Action for Breach of Contract an award of damages in the amount of \$150,000, plus unpaid interest.
2. On the Second Cause of Action for Breach of Contract an award of damages in the amount of \$250,000, plus unpaid interest.
3. On the Third Cause of Action for Breach of Contract an award of damages in the amount of at least \$79,000, and such additional amounts as further established at trial.
4. On the Fourth Cause of Action for Money Had and Received an award of damages in the amount of \$250,000, plus unpaid interest.
5. For attorneys' fees and costs.
6. For pre- and post-judgment interest in the maximum amount owed by law.
7. For such other relief as the Court may deem proper.

Dated: August 5, 2016

DIAMOND MCCARTHY LLP

By: /s/ Christopher D. Sullivan

Christopher D. Sullivan  
Attorneys for Plaintiff NATIONAL  
MEDICAL SERVICES, INC. dba NMS  
LABS.



**VERIFICATION**

National Medical Services, Inc. dba NMS Labs, a Pennsylvania Corporation v. INDX Lifecare,  
Inc., a Delaware Corporation

I, Pierre Cassigneul, declare:

I am the President and CEO of National Medical Services, Inc., in the above-entitled matter and am authorized to make this verification on its behalf.

I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 5<sup>th</sup>, 2016 at Willow Grove PA 19090

Pierre Cassigneul

Name